

**ADULT BOOKSTORES
CHAPTER 56**

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[HISTORY: Adopted by the City Council of the City of Dover 6-10-81 as Ord. No. 8-81. Amendments noted where applicable.]

56-1. Purpose.

The purpose of this chapter is to regulate the display of adult books, magazines and videotapes for the purpose of sale/rental by placing them out of view of minors. [Amended 04-02-97 by Ord. No. 04-97]

56-2. Definitions.

The following are definitions of terms as used in this chapter:

ADULT BOOK ,MAGAZINE OR VIDEOTAPE- Any book, pamphlet, magazine, videotape or printed matter, however reproduced, which contains any matter enumerated in RSA 571-B:2I(a) or explicit and detailed verbal descriptions or narrative accounts of sexual conduct which, taken as a whole, is harmful to minors. [Amended 04-02-97 by Ord. No. 04-97]

HARMFUL TO MINORS - That quality of any description or representation in whatever form of sexual conduct when it:

- A. Predominantly appeals to the prurient interest of minors in sex, that is, an interest in lewdness or lascivious thoughts;
- B. Depicts or describes sexual conduct in a manner so explicit as to be patently offensive to contemporary adult standards in the community, with respect to what is suitable material for minors; and
- C. Lacks serious literary, artistic, political or scientific value.

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KNOWINGLY - Having general knowledge of or reason to know or a belief or ground for belief which warrants further inspection or inquiry, or both, as to the character and content of any material described herein which is reasonably susceptible to examination by the defendant.

MINOR - Any person under the age of eighteen (18) years.

SEXUAL CONDUCT - Human masturbation, sexual intercourse, actual or simulated, normal or perverted, or any touching of the genitals, pubic areas or buttocks of the human male or female or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals, any depiction or representation of excretory functions, any lewd exhibitions of the genitals, flagellation or torture in the context of a sexual relationship. Sexual intercourse is simulated when it depicts sexual intercourse which gives the appearance of the consummation of sexual intercourse, normal or perverted.

56-3. Display of Merchandise.

Any person, firm or corporation knowingly offering for sale adult books and/or magazines shall display them on shelves, bookracks or other display devices at a height of no less than sixty (60) inches from the floor level immediately in front of the display racks or shelves or, in the absence of shelves or bookracks, having a minimum shelf height of sixty (60) inches; adult books and magazines shall be displayed on shelves behind the operator or the sales register or checkout counter; and any adult book or magazine cover thereof containing pictures, photographs or drawings of a person or portion of the human body, which depicts sexual conduct and which, taken as a whole, is harmful to minors shall not be open to public view.

A. VIDEO TAPE SALES/RENTALS [Added 04-02-97 by Ord. No. 04-97]

The following subsection shall apply to any video store or other premises selling/renting adult videos, or adult magazines, where the video cover or magazine cover depicting the adult material as defined in RSA 571-B:21(a) is in open view or exposed in any part of the store where minors are present on the premises.

1. Any video rental store renting adult videos as defined above shall be required to obtain a license and pay an annual fee of \$200.00. The license application shall be in accordance with 56-3(b).
2. All adult sexual material as defined above shall be kept in an enclosed room with a sign prohibiting minors. All such rooms shall not exceed 15% of floor space and shall be monitored and under the control of the store in a

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manner to prevent minors from gaining access to the room. [Amended 06/04/97 by Ord. 15-97]

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3. Any store which sells/rents adult videos/magazines as defined above, shall not display advertising signs/posters or other visual material depicting adult sales on the premises.

B. PERMIT and/or LICENSE REQUIRED. [Added 04-02-97 by Ord. No. 04-97]

1. An application for a permit and/or license must be made on a form provided by the Dover Licensing Board. The application must be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches.

2. The applicant must be qualified according to the provisions of this chapter and the premises must be inspected and found to be in compliance with the law by the health department, fire department and building official.

3. The Dover Licensing Board shall approve the issuance of a permit and/or license to an applicant within 30 days after receipt of an application unless he finds one or more of the following to be true:

- (a) An applicant is under twenty-one (21) years of age.

- (b) An applicant has failed to provide information reasonably necessary for issuance of the permit and/or license or has falsely answered a question or request for information on the application form.

- (c) The premises to be used for the business have not been approved by the health department, fire department, and the building official as being in compliance with applicable laws and ordinances.

- (d) The permit and/or license fee required by this ordinance has not been paid.

- (e) An applicant of the proposed establishment is in violation of or is not in compliance with any of the provisions of this ordinance.

- (f) The applicant has been convicted of an offense under RSA 632.

4. **Fees.** The annual fee for an adult bookstore/video store business permit

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and/or license is two hundred (\$200.00) dollars.

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5. Expiration.

- (a) Each permit and/or license shall expire one year from the date of issuance and may be renewed only by making application as provided in Section 56-3. Application for renewal should be made at least thirty (30) days before the expiration date, and when made less than thirty (30) days before the expiration date, the expiration of the permit and/or license will not be affected.
- (b) When the Dover Licensing Board denies renewal of a license, the applicant shall not be issued permit and /or license for one year from the date of denial. If, subsequent to denial, the Dover Licensing Board finds that the basis for denial of the renewal permit and /or license has been corrected or abated, the applicant may be granted a permit and /or license if at least ninety (90) days have elapsed since the date denial became final.

6. Suspension. The Dover Licensing Board shall suspend a permit and/or license for a period not to exceed thirty (30) days if he determines that a permittee and /or licensee or an employee of a permittee and/or licensee has violated or is not in compliance with any section of this ordinance.

7. Revocation.

- (a) The Dover Licensing Board shall revoke a permit and /or license if a cause of suspension in Section 56-3(6) occurs and the permit and /or license has been suspended within the proceeding twelve (12) months.
- (b) The Dover Licensing Board shall revoke a permit and/or license if he determines that:
 - (1) a permittee and /or licensee gave false or misleading information in the material submitted to the Licensing Board during the application process;
 - (2) a permittee and/or licensee or an employee has knowingly allowed possession, use, or sale of controlled substances on the premises;

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- (3) a permittee and/or licensee or an employee has knowingly allowed minors to access the enclosed area on more than one occasion.

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- (4) a permittee and/or licensee or an employee has knowingly operated the sexually oriented business during a period of time when the permittee's and/or licensee's permit and/or license was suspended;
 - (5) a permittee and/or licensee or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sexual conduct to occur in or on the permitted and/or licensed premises.
- (c) When the Dover Licensing Board revokes a permit and /or license, the revocation shall continue for one (1) year, and the permittee and /or licensee shall not be issued a sexually oriented permit and/or license for one (1) year from the date revocation became effective. If, subsequent to revocation, the Dover Licensing Board finds that the basis for the revocation has been corrected or abated, the applicant may be granted a permit and/or license if at least ninety (90) days have elapsed since the date the revocation became effective.
- (d) After denial of an application, or denial of a renewal of an application, or suspension or revocation of a permit and/or license, the applicant or licensee or permittee may seek prompt judicial review of such administrative action in any court of competent jurisdiction. The administrative action shall be promptly reviewed by the court.
- 8. Transfer of Permit and/or License.** A permittee and /or licensee shall not transfer his permit and/or license to another, nor shall a permittee and/or licensee operate a sexually oriented business under the authority of a permit and/or license at any place other than the address designated in the application.

56-4. Compliance required. [Amended 04-02-97 by Ord. No. 04-97]

It shall be unlawful for any person, firm or corporation to knowingly display any adult book or magazine or videotape in a manner inconsistent with the provisions of 56-3 of this

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chapter. In any enforcement action, in any provision of this ordinance it shall not be necessary for the City to negate any exception, excuse, proviso, or exemption contained herein, and the burden or proof of any exception, excuse, proviso, or exemption shall be on the defendant. Any section of Chapter 56, which does not specifically address or permit the display requirements as set forth by Sections 56-1 through 56-3, would require a 2/3 vote of approval by the City Council prior to an issuance of a license

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56-5. Violations and penalties. [Amended 04-02-97 by Ord. No. 04-97]

Any person, firm or corporation violating any of the provisions of this chapter shall be guilty of a violation and subject to a fine of up to one thousand dollars (\$1000.), no portion of which may be suspended. The stores license shall be subject to suspension for the first offense and revocation for a subsequent conviction.

56-6. Separability. [Added 04-02-97 by Ord. No. 04-97]

If any section, subsection, or clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected thereby.

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